

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIRLA PALMA,

Plaintiff,

v.

HOMEcomings, et. al.,

Defendants

No. C-08-4780 MMC

**ORDER DIRECTING PLAINTIFF TO
SHOW CAUSE WHY FIRST AMENDED
COMPLAINT SHOULD NOT BE
DISMISSED**

By order filed December 8, 2008, the Court directed plaintiff Mirla Palma to show cause why her initial complaint should not be dismissed for failure to state a claim upon which relief could be granted. On December 11, 2008, plaintiff responded to said order by filing a First Amended Complaint ("FAC"). Having read and considered the FAC, it appears to the Court that plaintiff has, again, failed to state a claim upon which relief could be granted.

As to the First Cause of Action, a claim for "breach of contract/covenant of good faith and fair lending," plaintiff alleges that she entered into an agreement with defendant Homecomings, under which Homecomings provided plaintiff with a loan. Plaintiff further alleges that when she requested that Homecomings modify the terms of her loan, Homecomings declined to do so. Plaintiff fails to allege why Homecomings' alleged failure to modify the terms of her loan constituted the breach of any provision of her contract with

1 Homecomings.

2 As to the Second Cause of Action, a claim for “fraud and racketeering,” plaintiff’s
3 claim appears to fail for the same reason the Second Cause of Action in her initial
4 complaint failed to state a claim. Specifically, plaintiff has failed to plead such claim with
5 specificity, as is required by Rule 9(b) of the Federal Rules of Civil Procedure. In particular,
6 plaintiff has failed to identify a false or misleading statement made by a defendant, has
7 failed to identify the speaker of any such statement, has failed to state when and where any
8 such statement was made, and has failed to state that she relied to her detriment on any
9 such statement.

10 As to the Third Cause of Action, a claim for “usury and racketeering,” plaintiff’s claim
11 appears to fail for the same reason the Third Cause of Action in her initial complaint failed
12 to state a claim. Specifically, plaintiff does not allege that she was charged any particular
13 rate of interest by a defendant, let alone a rate that is usurious; plaintiff’s conclusory
14 reference to defendants’ “charging excessive interest” is insufficient.

15 As to the Fourth Cause of Action, a claim for “intentional infliction of severe mental
16 and emotional distress,” plaintiff’s claim appears to fail for the same reason the Fourth
17 Cause of Action in her initial complaint failed to state a claim. Specifically, plaintiff has
18 failed to allege that any defendant committed an act that can be characterized as extreme
19 and outrageous, or that she incurred severe emotional distress.


20 Finally, to the extent plaintiff, by including the term “42 U.S.C. 1983” in the caption of
21 her complaint, may be attempting to state a claim under 42 U.S.C. § 1983, any such claim
22 appears to fail for the same reason any such claim in the initial complaint failed.
23 Specifically, plaintiff has failed to allege that she was deprived of any federal right and that
24 any such deprivation occurred under color of state law.

25 Accordingly, plaintiff is hereby ORDERED TO SHOW CAUSE, in writing and no later
26 than January 9, 2009, why the FAC should not be dismissed. See Wong v. Bell, 642 F. 2d
27 359, 361 (9th Cir. 1981) (holding “trial court may act on its own initiative to note the
28 inadequacy of a complaint and dismiss it for failure to state a claim”). To the extent plaintiff

1 seeks to respond by amending again, plaintiff must first file a motion for leave to amend.
2 See Fed. R. Civ. P. 15(a) (providing that if a plaintiff has amended a complaint once, "a
3 party may amend [a second time] only with . . . the court's leave").

4 **IT IS SO ORDERED.**

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6 Dated: December 18, 2008

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8 MAXINE M. CHESNEY
9 United States District Judge
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